IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1076 OF 2004

Anant Moru Baikar & Ors. ...Appellants
vs.
Narayan Sadu Katale & Ors. ...Respondents

Ms Smita Gaidhani i/b Mr. Sachindra Shetye for the Appellants
Mr.S.M.Kamble for Respondents.

CORAM: A.S.OKA,J.
DATE : APRIL 29,2005.

P.C.:

1. Heard Advocates for the parties. Admit. Respondents waive service. Taken up for hearing forthwith.

2. The Appeal is preferred by the original Defendants for challenging the impugned Judgment and Order dated 9th August 2004 by which the Application for temporary injunction made by the Respondents-Plaintiffs has been allowed. The order of temporary injunction read thus :

"1. Application is allowed.

2. Defendant No.6 is hereby restrained from making construction of whatsoever kind in the suit land or from demolishing the existing social temple standing in the suit land till final decision of the suit.

3. No order as to costs."

3. The order of temporary injunction was thus granted against the Defendant No.6 who is the Appellant No.2.

4. After arguing the Appeal for some time, the Appellants

i.e. original Defendant No.1 and Defendant No.6 have tendered undertakings on Affidavit on record of the Appeal from Order. The same are taken on record and collectively marked 'X' for identification. In the said undertakings it is stated thus :

"3 We undertake this Hon'ble Court that we shall not make any construction of whatsoever kind in the suit land till the disposal of the Special Civil Suit No.47/2004.

4. We also undertake this Hon'ble Court that we shall not demolish the existing alleged Social Temple standing in the suit land till final decision of the Special Civil Suit No.47/2004.

5. We also undertake this Hon'ble Court that we shall not create any third party interests in the suit land from today till the final disposal of the Special Civil Suit No.47/2004..."

The undertakings are accepted.

6. The impugned order of temporary injunction was passed against the Appellant No.2. Now both the Appellants have given solemn undertaking not to do the acts which were prohibited by the order of temporary injunction. The said undertakings of the Appellants which are accepted will protect the interests of the original Plaintiffs.

7. In view of the said undertakings the impugned Judgment and Order deserves to be quashed and set aside.

8. Hence, I pass the following order :

i) The undertakings of the Appellants recorded in Affidavit dated 25th April 2005 are accepted. In view of the acceptance of the said undertakings the impugned Judgment and Order is quashed and set aside and the Application at Exh.8 stands dismissed.

ii) It is made clear that all contentions of the parties in the pending suit on merit are expressly kept open.

iii) Appeal from Order is partly allowed in above terms with no order as to costs.

iv) Hearing of the Special Civil No.47 of 2004 is expedited and the learned Trial Judge is directed to decide the same expeditiously and in any event on or before 28th February 2006.

. The concerned Court and the parties to act upon an authenticated copy of this order.

JUDGE.